IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

David Allen Dorton, Sr.,

Plaintiff,

v.

Equifax Information Services, LLC and

Comenity Bank

Defendants.

Case No.:

COMPLAINT
WITH JURY TRIAL DEMAND

PRELIMINARY STATEMENT

1. This action for damages is based on Defendants' false reporting on Plaintiff's credit reports and failures to follow reasonable procedures and failures to conduct reasonable investigations with respect to such information.

PARTIES

2. Plaintiff, David Allen Dorton, Sr., is natural person who resides in Rockdale County, Georgia.

3. Plaintiff is an individual and is therefore a "consumer" as that term is defined by 15 U.S.C. § 1681a(c).

4. Plaintiff is allegedly obligated to pay a debt and is therefore a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

5. Defendant, Comenity Bank (hereinafter “Comenity") is a Delaware corporation that does business in Georgia.

6. Defendant regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about Plaintiff’s transactions and is therefore a “furnisher” as that term is used in 15 U.S.C. § 1681s-2.

7. Defendant uses interstate commerce or mail in business the principal purpose of which is the collection of any debts and/or regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).

8. Defendant Equifax Information Services, LLC (hereinafter Equifax) is a credit reporting agency doing business in Georgia.

9. Equifax regularly assembles and/or evaluates consumer credit information for the purpose of furnishing consumer reports to third parties, and uses interstate commerce to prepare and/or furnish the reports, and accordingly, is a “consumer reporting agency” as that term is defined by 15 U.S.C. § 1681a(f).

JURISDICTION AND VENUE

10. Because this case arises under the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., and the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.,>

jurisdiction of this Court arises under 28 U.S.C. § 1331. Additionally, jurisdiction and authority to enforce a bankruptcy court order arises under 28 U.S.C. § 1334, and supplemental jurisdiction for state law claims arises under 28 U.S.C. § 1367.

11. Venue is proper in this Court because a substantial part of the claim arose in Georgia, and all Defendants "reside" in Georgia, as that term is used in 28 U.S.C. § 1391.

FACTUAL ALLEGATIONS

12. On August 31, 2011, the Plaintiff filed a bankruptcy petition in the Northern District of Georgia, case number 11-74959. The Plaintiff received a discharge of his her debts by Order of that Court dated February 2, 2015.

13. Among the debts discharged was a debt owing to Comenity.

14. The alleged debt was primarily for personal, family or household purposes and was therefore a "debt" as that term is defined by 15 U.S.C. § 1692a(5).

15. On or about March 26, 2015 Plaintiff obtained a copy of his credit report as published by Equifax

16. That report contained erroneous information as provided by Comenity and published and reported by Equifax. Specifically, the Defendants reported that there was a balance due and owing, and that the delinquency was increasing, following the filing of the plaintiff's bankruptcy case, in

violation of both the automatic stay afforded by 11 U.S.C. § 362 and the discharge injunction contained in 11 U.S.C. § 524.

17. While the automatic stay was in effect during the Plaintiff's bankruptcy, it was illegal for Defendant Comenity to report any post-bankruptcy derogatory collection information.

18. Defendant did not, during the pendency of the Plaintiff's bankruptcy case, obtain relief from the automatic stay for the purpose of continuing collection efforts by reporting post-filing derogatory collection information.

19. Notwithstanding the effect of the automatic stay, Defendant reported an open account with a balance owing and an increasing delinquency to Equifax after Plaintiff’s bankruptcy filing.

20. Because Plaintiff’s debts were discharged in bankruptcy, the information described above was both false and misleading.

21. In a letter dated June 8, 2015, Plaintiff disputed the inaccurate and misleading information to both Defendants and advised both Defendants of the specific facts that rendered the reporting inaccurate and misleading.

22. Upon information and belief, Defendant Equifax timely notified Defendant Comenity of the Plaintiff's dispute in accordance with 11 U.S.C. § 1681i.

23. In a document dated June 15, 2015 Defendant Equifax advised Plaintiff that it had researched Plaintiff's dispute and that the item was being reported

correctly. Defendant Equifax provided a copy of the tradeline as reported that reproduced the errors identified by the Plaintiff in his original dispute letter. A copy of this Reinvestigation Report is attached as Exhibit A.

24. There is no indication in the tradeline of the “verified” report that the Plaintiff has disputed the information published by Defendants.

25. Defendant Equifax was required to communicate the specifics of Plaintiff's dispute to Defendant Comenity. Likewise, Defendant Comenity has a duty to investigate the dispute and accurately report its findings to Defendant Equifax.

26. Equifax had an affirmative duty to independently investigate the dispute submitted by Plaintiff and to accurately report the tradeline information notwithstanding the information it received from Defendant Comenity.

27. The Defendants are each responsible for following reasonable procedures to assure maximum possible accuracy whenever they prepare consumer reports from information in their shared database.

28. Each and both of the Defendants, independently and jointly, breached their duties as described above.

29. Due to Defendants’ respective failures to conduct reasonable investigations of Plaintiff’s disputes, the indication on Plaintiff’s credit reports that the

inaccurate and misleading information was not appropriately deleted or modified.

30. As a result of Defendants' willful actions and omissions, Plaintiff is eligible for statutory damages.

31. Also as a result of Defendants' actions and omissions, Plaintiff has suffered actual damages, including without limitation credit denials, out-of-pocket expenses in challenging the Defendants' wrongful representations, detriment to his credit rating and emotional distress.

32. Comenity's reporting of the debt to one or more credit bureaus was an attempt to collect the debt.

33. Defendant provided the false and misleading information to Equifax in furtherance of its efforts to collect the debt.

TRIAL BY JURY

34. Plaintiff is entitled to and hereby requests a trial by jury.

CAUSES OF ACTION

COUNT I

VIOLATIONS OF THE FAIR CREDIT REPORTING ACT
15 U.S.C. §§ 1681e(b) and 1681i
(Equifax Information Services, LLC)

35. Plaintiff incorporates by reference all preceding paragraphs as though fully stated herein.

36. Defendant Equifax willfully and/or negligently violated 15 U.S.C. § 1681e(b) by failing to follow reasonable procedures to assure the maximum possible accuracy of Plaintiff's consumer reports.

37. Defendant Equifax willfully and/or negligently violated 15 U.S.C. § 1681i in multiple ways including without limitation by failing to conduct a reasonable reinvestigation of Plaintiff's disputes and by failing thereafter to appropriately delete or modify information in Plaintiff's file.

38. As a result of Defendant Equifax violations of §§ 1681e(b) and 1681i, Plaintiff has suffered actual damages, including without limitation credit denials, out-of-pocket expenses in challenging the Defendant's wrongful representations, detriment to his credit rating and emotional distress. Plaintiff is therefore entitled to recover actual damages pursuant to 15 U.S.C. §§ 1681n and 1681o.

39. Defendant Equifax's actions and omissions were willful, rendering them liable for punitive damages and/or statutory damages pursuant to 15 U.S.C. § 1681n.

40. Plaintiff is entitled to recover costs and attorney's fees from Defendant Equifax pursuant to 15 U.S.C. §§ 1681n and 1681o.

COUNT II

VIOLATIONS OF THE FAIR CREDIT REPORTING ACT, 15 U.S.C. § 1681s-2(b) (Comenity Bank)

41. Plaintiff incorporates by reference all preceding paragraphs as though fully stated herein.

42. Defendant Comenity willfully and/or negligently violated 15 U.S.C. § 1681s-2(b) by failing to conduct reasonable investigations upon receiving notice of Plaintiff's dispute(s) from one or more consumer reporting agencies, and/or by failing to appropriately report the results of their investigations, and/or by failing to appropriately modify, delete, and/or block the information.

43. As a result of Comenity's violations of § 1681s-2(b), Plaintiff has suffered actual damages not limited to credit denials and out-of-pocket expenses in challenging the Defendant's wrongful representations, detriment to his credit rating, and emotional distress. Plaintiff is therefore entitled to recover actual damages under 15 U.S.C. §§ 1681n and 1681o.

44. Defendant Comenity's actions and omissions were willful, rendering it liable for punitive damages and/or statutory damages pursuant to 15 U.S.C. § 1681n.

45. Plaintiff is entitled to recover costs and attorney's fees from Defendant Comenity pursuant to 15 U.S.C. §§ 1681n and 1681o.

COUNT III

VIOLATIONS OF THE BANKRUPTCY DISCHARGE INJUNCTION, 11 U.S.C. § 524(a)(2) (Comenity Bank)

46. Plaintiff incorporates by reference all preceding paragraphs as though fully stated herein.

47. Defendant Comenity's action of reporting derogatory collection information, including that there is still a an active account with a growing delinquency, on the credit report of March 26, 2015 was an overt attempt to collect a debt in bankruptcy.

48. Comenity's failure to correct this false and misleading discharged debt when requested and after receiving actual notice constitutes a willful violation of 11 U.S.C. § 524(a)(2).

49. Defendant Comenity's actions and omissions were willful, rendering it liable for civil contempt sanctions.

WHEREFORE, Plaintiff prays that judgment be entered against these Defendants for:

a.) Plaintiff's actual damages;

b.) Punitive and/or statutory damages pursuant to 15 U.S.C. § 1681n;

c.) Reasonable attorney's fees and costs pursuant to 15 U.S.C. §§ 1681n and/or 1681o;

d.) Statutory damages against Comenity pursuant to 15 U.S.C. § 1692k;

e.) Civil Contempt damages and penalties in an amount sufficient to affirm the integrity of the Orders of the Bankruptcy Court, the importance of guaranteeing the Plaintiff the "Fresh Start" she entitled to upon discharge, and to deter future similar conduct on the part of the Defendant; and

f.) Reasonable attorney's fees and costs against Comenity pursuant to 15 U.S.C. § 1692k; and

g.) Such other and further relief as may be just and proper.

Respectfully submitted this 29th day of September, 2015.

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